

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)	
)	
Plaintiff)	
)	
vs.)	No. CR-15-126-5-C
)	CIV-20-527-C
CURTIS ALLEN ANTHONY,)	
)	
Defendant)	

ORDER

Pending before the Court is Defendant's Ex Parte Motion for Issuance of Subpoena Duces Tecum. Therein Defendant requests copies of billing vouchers and time records submitted by his trial counsel. Defendant argues these documents will be relevant to his claim of ineffective assistance of counsel. Specifically, Defendant argues the time records for the period between judgment and sentencing may reflect communications between trial counsel and Defendant which bear on the ineffective assistance of counsel claim.

Pursuant to Rule 6 of the Rules Governing Section 2255 Proceedings the Court may allow discovery to proceed under either the Federal Rules of Civil Procedure or the Federal Rules of Criminal Procedure. The Rule is "deliberately not specific" thereby permitting the Court to determine which Rules are most applicable under the facts of the case at bar. See United States v. Balistrieri, 606 F.2d 216, 221 (7th Cir. 1979). Here, the Court determines that Defendant's requested discovery must proceed pursuant to the Federal Rules of Civil Procedure as the reasons for secrecy relevant to the criminal rules are not

present here. Thus, Defendant's request will be denied as he has failed to provide notice of the subpoena as required by Fed. R. Civ. P. 45(a)(4).

For the reasons set forth herein, Defendant's Motion for Issuance of Subpoena Duces Tecum (Dkt. No. 577) is DENIED. Because the Court has determined the discovery sought in this matter should proceed pursuant to the Federal Rules of Civil Procedure, the Order (Dkt. No. 576) permitting the Motion to be filed under seal is VACATED.

IT IS SO ORDERED this 8th day of November 2022.



ROBIN J. CAUTHRON
United States District Judge